



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
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STATEMENT BY

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BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss our review of the Department of Commerce's export licensing process for dual-use commodities. This work was done in response to your request that we look at the process and update the 1993 Inspectors General report on export licensing.

Commerce's Bureau of Export Administration (BXA) administers the Nation's dual-use export control licensing and enforcement system for national security, foreign policy, and nonproliferation reasons. Based on our review of BXA, and as generally supported by the findings of the other IGs, we determined that the interagency license review process is working reasonably well and has improved much since 1993. The Departments of Defense, Energy, State,¹ Justice, and the CIA now review many more of the license applications submitted to Commerce. In FY 1998, BXA referred 85 percent of license applications, up from 53 percent in 1993. Clearly, this multi-agency review brings divergent policy views and more information to

¹The U.S. Arms Control and Disarmament Agency was a separate referral agency until April 1999, when it became a part of the Department of State.

bear on license decision-making. In addition, the four-level escalation process for resolving license disputes among the referral agencies is working relatively well.

While we found significant areas of improvement since our 1993 review, we also identified a number of issues that warrant the attention of the Commerce Department, the Administration, and the Congress.

First and foremost, it is time to push even harder for new legislation to replace the expired Export Administration Act. There is also a need to clarify the licensing policy and regulations regarding the release of controlled technology to foreign nationals working in federal and private research facilities—commonly referred to as “deemed exports.” We found a general lack of knowledge and understanding on the part of U.S. industry and the federal laboratories about deemed export regulations and when such an export license is required.

A third area where we see the need for change involves the requirement that a post shipment verification be conducted for every high performance computer, or HPC, greater than 2000 MTOPS² that is shipped to countries of concern. Our review concluded that this is not the most effective use of government resources. This requirement has, in effect, forced BXA to divert some of its enforcement resources to verify shipments of “lower end” HPCs or on multiple visits to the same end-users.

²Million Theoretical Operations Per Second.

Mr. Chairman, in response to your question about the adequacy of guidance and training for licensing officers, we have mixed findings. We initially identified the lack of up-to-date guidelines as one of BXA's major weaknesses. However, near the end of our review, BXA officials issued new work guidelines for licensing officers, and are considering further changes.

We also recommended that BXA establish a formal training program for all of its licensing officers to supplement its current on-the-job training. Further we suggested that BXA expand the use of a comprehensive training program that its Encryption Policy Division has developed for its new licensing officers.

In response to the Chairman's question about pressure on licensing officers, most BXA licensing officials reported that they had not been pressured into changing their recommendations on specific licenses. Two of the 36 licensing officials who responded to this survey question did state, however, that they had received some pressure from management. But, our intense follow-up on this question did not provide evidence to support these individuals' statements.

We did, however, have questions about BXA managers' instructions to the Chair of the Operating Committee on her decisions on a few OC cases. We advised them that if the Chair makes a decision that BXA disagrees with, BXA should escalate the case to the Advisory Committee for Export Policy in order to avoid even the appearance that this part of the process is not transparent.

The commodity classification process, or CCATS, is another area ripe for improvement. First, BXA needs to improve the timeliness of its processing of exporters' CCATS requests. Second, we recommend that BXA refer all defense-related CCATS requests to both the Defense and State Departments for their review.

As I stated earlier, we believe the overall referral process is generally more effective because of greater interagency involvement. However, we still found some problems. We were especially concerned about (1) licensing officers amending some existing licenses without interagency review; (2) inadequate review time being provided to the CIA's Nonproliferation Center for its end-user checks; and (3) BXA approval of licenses based on a favorable end-use check after the pre-license check was canceled. BXA management has agreed to correct or address most of these problems.

In addition, I would like to highlight two other problems that require interagency action and attention by the Congress. First, we found that the CIA and its Nonproliferation Center, at their own request, review only 45 percent of all referred dual-use export applications. In addition, they do not always conduct a comprehensive analysis of the applications they do receive. Furthermore, there is no mechanism to track the cumulative effect of technology transfers. Such cumulative effect analysis—while admittedly difficult to make—would be a useful addition to the license review process.

Another key missing element is the screening of all license applications against the Treasury Enforcement Communications System (TECS) database maintained by the U.S. Customs Service.

We also have recommended a change in the exporters appeals process. Once an export license application has been formally denied, the exporter has the right to appeal to the Under Secretary of Commerce for Export Administration. Although BXA confers informally with the referral agencies before deciding on appeals, we believe this interagency process should be formalized.

Regrettably, Mr. Chairman, we found that BXA is still not adequately monitoring license conditions, as we first reported in 1993. This means that BXA is less able to determine if licensed goods have been diverted to unauthorized end-users, and exporters may receive new licenses even if they did not comply with previous licenses.

We also found some recurring problems with respect to end-use checks conducted by Commerce's U.S. and Foreign Commercial Service, including (1) untimely end-use checks, (2) use of foreign service nationals and personal services contractors to conduct some checks, and (3) failure to always perform on-site inspections. In addition, while we found that BXA's Safeguard Verification program enhances the quality of end-use checks because of its use of enforcement agents, we made suggestions to make this program even more useful.

And, finally Mr. Chairman, in response to your question about BXA's automated export licensing system, called ECASS,³ we found that the system's internal controls are generally adequate. Moreover, its data are sufficiently reliable and licensing recommendations entered into ECASS cannot be changed without the knowledge of the licensing officer.

At the same time, it is clear that BXA's automated information system is inefficient and needs to be replaced. ECASS lacks good query and text capabilities, modern interfaces, and online access to exporters' technical specifications. We endorse BXA's efforts to secure funding for a new system. We recommended that BXA consider a classified system, which will improve access to classified data and interface with the referral agencies. We also urged BXA to better coordinate its system development efforts with the other export licensing agencies.

This concludes my statement Mr. Chairman. I would be pleased to answer any questions you or other Members of the Committee may have.

³Export Control Automated Support System